

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 385 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME TAX

Versus

GUJARAT NARMADA VALLEY FERTILIZERS CO LTD

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 11/12/98

ORAL JUDGEMENT (per R. Balia, J.)

The question referred to this court for its opinion at the instance of the revenue by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', is as follows:

"Whether, on the facts and in the circumstances

of the case, the Tribunal was right in holding that the interest u/s 291(1A) of the I.T. Act should be calculated with reference to the net amount of tax i.e. the actual payment made by the assessee to the non-resident and not on the basis of the gross amount of tax?"

2. The facts leading to this reference are that the assessee remitted net amount of Rs. 22,47,484/- being 60% of the gross amount of Rs. 37,46,973/- to M/s. Linde A.G. of West Germany on 14.11.1979. The assessee did not deduct the tax at source, nor did it deposit the same until 7.1.1980. The ITO held the assessee in default and made an order levying interest u/s 201(1A) of the I.T. Act at the rate of 12% for the period between 15.11.79 to 6.1.80. However, he levied interest by calculating the amount of tax that ought to have been deducted at the gross amount and not the net amount remitted by the assessee.

3. As the question suggests, the assessee must be deemed to be in default in payment of which amount: the tax to be deducted on the net amount remitted or the tax on the gross amount payable by the assessee to the foreign company. In the case of assessee for this very assessment year, the Income Tax Appellate Tribunal held that assessee was liable to pay tax on the actual amount remitted to non-resident without grossing up. In appeal against the levy of interest as a consequence of its finding in the assessment, the tribunal accepted the plea of the assessee that the amount in respect of which assessee is deemed to be in default is the tax calculated on the net remittance and not on the gross amount payable.

4. We are told that a reference had been made to this court in respect of main assessment which was subject-matter of I.T. Reference No. 130/82. That reference has not been pressed and therefore the finding of the tribunal about the liability of the assessee to make payment of tax on the actual amount of remittance remains in tact. That being the case, the irresistible conclusion is that the assessee must be deemed to be in default only in respect of the net amount which was found to be payable by the assessee on actual amount of remittance and he is liable to pay interest thereon only. The liability of interest is not on any other sum, other than which he has been found actually liable to pay.

5. We, therefore, answer the question referred to us in affirmative, that is to say, in favour of the assessee

and against the revenue. There shall be no order as to costs.

(hn)